

UNITED STATES OF AMERICA
BEFORE THE NATIONAL LABOR RELATIONS BOARD
DIVISION OF JUDGES

ELECTRONIC AND SPACE TECHNICIANS
LOCAL 1553 (RAYTHEON COMPANY)

and

ERIC MUSICK, an Individual

Cases 31–CB–152342
31–CB–158356
31–CB–152970

and

LOUIS PARADISO, an Individual

Bradley A. Fink, Esq.
for the General Counsel.
Daniel M. Shanley, Esq. and
Judy H. Juang, Esq.
for the Respondent.

DECISION

STATEMENT OF THE CASE

AMITA BAMAN TRACY, Administrative Law Judge. This case was tried in Los Angeles, California on February 10, 2016. Eric Musick (Musick) filed charge, case 31–CB–152342, on May 14, 2015, and case 31–CB–158356, on August 19, 2015, and Louis Paradiso (Paradiso) filed charge, case 31–CB–152970, on May 26, 2015. The General Counsel issued a consolidated complaint on October 1, 2015, and the amended consolidated complaint on December 23, 2015.

The consolidated complaint and amended consolidated complaint allege that the Union violated Section 8(b)(1)(A) of the National Labor Relations Act (the Act) when (1) since on or about April 28, 2015, it failed to formulate and implement rational, non-arbitrary criteria to guide its designation of the recipients of settlement agreement monies; and (2) since on or about December 8, 2014, it failed to award settlement agreement monies to the Charging Parties’ because of their lack of membership in the Union and/or perceived failure to pay dues. Electronic and Space Technicians Local 1553 (the Union or Respondent), in its answer, denied that it violated the Act as alleged.

As discussed further, I find that Respondent violated Section 8(b)(1)(A) of the Act when it formulated and implemented an irrational, arbitrary criteria to distribute the settlement agreement monies at issue here. Respondent used this unlawful criterion as its sole basis for distributing the settlement monies. As a result, I find that Respondent did not base its decision to distribute the settlement monies because of Charging Parties’ lack of membership in the Union and/or perceived failure to pay dues.

Based upon the entire record,¹ including my observation of the demeanor of the witnesses,² and after considering the briefs filed by the General Counsel and the Union,³ I make the following findings of fact and conclusions of law.

FINDINGS OF FACT

I. JURISDICTION AND LABOR ORGANIZATION

Raytheon Company (Raytheon or the Employer) is a corporation with an office and place of business in El Segundo, California, and has been engaged in the design, manufacture, testing, integration, and installation of electronic systems, radars, missile systems, and other goods and services for the U.S. government and other customers. The complaint alleges, and the Union admits that annually the Employer sells and ships from its El Segundo, California facility, goods valued in excess of \$50,000 directly to points outside the State of California. The Union admits, and I find that Raytheon is an employer engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act (Tr. 11).

The Union admits, and I find, that it is a labor organization within the meaning of Section 2(5) of the Act.

II. THE ALLEGED UNFAIR LABOR PRACTICES

A. Background

During all relevant times, the Employer and the Union have been parties to a collective-bargaining agreement for Raytheon’s employees at its El Segundo facility.⁴ The Union is the sole and exclusive representative for all production, maintenance, shop clerical employees employed in factory areas, and all employees in the job classifications listed in the appendix of the collective-bargaining agreement and who are employed in the El Segundo, Fullerton, Carson, Van Nuys, LAX and Pt. Mugu locations (Jt. Exh. 1). This bargaining unit includes product

¹ The transcripts in this case are generally accurate, but I make the following correction to the record: Transcript (Tr.) 81, Line (L.) 19: “store” should be “steward.”

² Although I have included citations to the record to highlight particular testimony or exhibits, my findings and conclusions are not based solely on those specific record citations but rather on my review and consideration of the entire record for this case. I further note that my findings of fact encompass the credible testimony and evidence presented at trial, as well as logical inferences drawn therefrom.

³ Additional abbreviations used in this decision are as follows: “GC Exh.” for General Counsel’s exhibit; “Jt. Exh.” for joint exhibit; “GC Br.” for the General Counsel’s brief; and “R Br.” for the Respondent’s brief.

⁴ The duration of collective-bargaining agreement was from June 11, 2011 to June 7, 2015.

development technicians (PDT) or environmental technicians (collectively, “environmental technicians”).

At the El Segundo facility, four bargaining unit employees work as environmental technicians. The four bargaining unit employees are Musick, Paradiso, John Samoian (Samoian), and Jose Galicia (Galicia).⁵

Since the beginning of his employment with Raytheon, Musick’s relationship with the Union has been as an agency fee payer.⁶ Paradiso became a dues paying member of the Union in January 2008, but due to a clerical error, his dues were not actually deducted between January 2008 and mid-2014 when the error was discovered (Tr. 69).⁷ Galicia and Samoian were also dues paying members of the Union at all relevant times.

Prior to the distribution of the settlement monies at issue in this case, both Musick and Paradiso received settlement money from the Union in other grievances. Paradiso testified that he did not participate in the grievance in which he was given settlement money. Musick, however, testified that he received settlement money from a grievance in which he participated.

B. Integrated Test Facilities Grievance

On July 22, 2013, the Union filed a general grievance (grievance number ES-7-13016) at step 2 with the Employer alleging that Raytheon violated articles 2, 3, and 4 of the collective-bargaining agreement when non-bargaining unit employee(s) were allowed to perform the duties of environmental technicians running environmental tests in the Integrated Test Facilities (ITF) lab (ITF grievance) (Jt. Exh. 2).⁸ Union Business Agent/Representative Steve Griggs (Griggs) explained that the Union defined the ITF grievance as a general grievance since there were no “ascertainable individuals or individuals that are harmed.” Furthermore, the Union’s financial secretary and senior steward Philip Limon (Limon), who began handling the ITF grievance in December 2013, testified that an internal union investigation disclosed that no bargaining unit employees were individually financially harmed by the work being performed by non-bargaining

⁵ Galicia and Samoian did not testify.

⁶ Section 8(a)(3) of the Act allows an employer and a labor organization to enter into an agreement requiring all employees in the bargaining unit to pay union dues as a condition of continued employment, whether or not the employees become union members. An “agency fee payer” is an employee who chooses not to become a member of a labor organization but is required to pay an agency fee for remaining in good standing to continue employment. An agency fee payer pays to cover expenditures on collective-bargaining activities only instead of periodic dues and initiation fees which can also cover organizing other employees, lobbying, and participating in social, charitable and political events. *Communications Workers of America v. Beck*, 487 U.S. 735, 735, 744 (1988). The agreement between the Employer and the Union governing the requirement of paying union dues as a condition of employment is found at article 27 of the collective-bargaining agreement.

⁷ The Union never pursued Paradiso for the back dues.

⁸ Article 23 of the collective-bargaining agreement separates grievances into two categories: “employee grievances” and “general grievances.” An employee grievance is defined as a dispute or claim by an employee that the Employer has denied that employee a right given to him or her under the collective-bargaining agreement. A general grievance is defined as a dispute or claim by two or more employees, or the Union, that the Employer has denied a right given to them under the collective-bargaining agreement.

unit employees (Tr. 33–34, 35, 39–40). Griggs, who worked with Limon on the ITF grievance, explained that the Union looked for employees to assist the Union in processing the ITF grievance, and only one individual, Samoian, stepped forward (Tr. 85).

5 Ultimately, on December 18, 2014, effective February 1, 2015, the Union and the Employer settled the ITF grievance. Musick, Paradiso, Samoian, and Galicia eventually began receiving this work previously performed by non-bargaining unit employees. As part of the settlement, the Employer agreed “to compensate PDT Environmental Technicians designated by the Union a total of \$20,000.00 less applicable deductions” (Jt. Exh. 3). This lump sum was not specifically associated with any missed work hours or salary for bargaining unit employees (Tr. 23, 87). Kevin Dodd (Dodd), union business manager/agent, signed this settlement agreement on behalf of the Union.

15 *C. ITF Grievance Settlement Money Distribution*

Between December 2014 and February 2015, Griggs repeatedly asked Limon to whom he wanted to distribute the settlement money. Eventually, Griggs told Limon that he thought that Samoian should receive the settlement money because he was the “only one who stepped forward, was willing to participate [in the ITF grievance] and a participant in the process” (Tr. 89).

Eventually, Dodd, Griggs, and Limon decided to distribute the \$20,000.00 settlement money to Samoian only (Tr. 23, 35).⁹ These three union officials decided to give Samoian the entirety of the settlement money because he brought the issue to the Union’s attention, helped to investigate the matter, reviewed the grievance documents, attended the grievance meetings, and was prepared to testify at the arbitration (Tr. 24–25, 86). Limon testified that the Union maintains an unwritten policy that rewards bargaining unit employees who assist the Union with processing general grievances (Tr. 27).¹⁰ Limon also testified that he could not recall if he asked any other environmental technicians other than Samoian to assist the Union with the grievance. Limon further explained that he did not ask Samoian if any of the other environmental technicians assisted him with the grievance.

According to Musick and Paradiso, they were not asked to participate in the ITF grievance nor did they come forward to assist the Union with the grievance despite their awareness of the ITF grievance. Musick admitted he was copied on requests for information from the Union regarding the ITF grievance but did not respond (Tr. 51). Musick also admitted that he complained to their department steward about Samoian “causing trouble” and claiming that Samoian only participated in the ITF grievance to “get money” (Tr. 51). In contrast, Paradiso testified that he provided Samoian evidence to be used in processing the grievance, and admitted that he knew the progress of the grievance as it proceeded (Tr. 70–71).

⁹ Griggs and Dodd testified that the business agents have the ultimate authority on who settlement monies may be awarded but seek the input from the stewards (Tr. 91, 102–103).

¹⁰ The parties stipulated that between July 22, 2013, and May 1, 2015, the Union never maintained a written policy regarding the distribution of funds from grievance settlements (Jt. Exh. 4).

On Monday, February 9, 2015, Limon sent Samoian a text message (GC Exh. 2).¹¹ Limon informed Samoian that he would be the only bargaining unit employee receiving the \$20,000 settlement money. Limon wrote, “Just u! Pal.” Limon also met with Samoian and advised him to remain “private” about receiving the settlement money (Tr. 29). Limon credibly
 5 explained that the Union advises bargaining unit employees to remain quiet or private about receiving settlement money for fear of retaliation by the Employer, and also other employees who may feel that they are owed money as well (Tr. 35–36). Griggs testified similarly.

D. Charging Parties’ Discussions with Limon about the Settlement Monies Distribution

On April 28, Musick sent an email to Limon asking if the bargaining unit employees had won the right to perform the work that was the subject of the ITF grievance, and if so, whether there was any monetary settlement money (GC Exh. 3). Limon responded that the ITF grievance had been settled with the work in dispute to be performed by bargaining unit employees. Limon
 15 also informed Musick that the settlement money had been paid but that the Union had other “unresolved grievances that the Union is pursuing” and would keep him informed. Musick and Limon continued to exchange email messages on the subject. After Musick learned that Galicia, Paradiso and he would not be receiving any settlement money, Musick requested a written response from Limon as to why Samoian received the entire settlement amount. Rather than
 20 provide a written response, Limon requested to meet with Musick and the other employees to answer their questions and concerns.

Similarly, Paradiso sent an email to Limon on April 29, asking why they were “cut” out of the settlement money for the ITF grievance (GC Exh. 4). Paradiso also stated that in the prior
 25 5 years he had been sent home on numerous occasions for lack of bargaining unit work, which, as a result of the settlement, was now to be performed by bargaining unit employees rather than supervisors. Paradiso indicated that he wanted to file a grievance for his lost wages. Limon responded that he was unaware of any grievance being filed for loss of hours but agreed to meet to file an employee grievance on behalf of Paradiso.¹² Paradiso admitted that the first time he
 30 told the Union of his claimed lost work hours was around this time period (Tr. 77). Paradiso told Limon that he thought the grievance was being filed on behalf of all environmental technicians and did not know he needed to file a grievance on his own behalf.

On the morning of May 1, Limon met with Musick, Paradiso and Galicia. Department
 35 Steward Kathie Arceo (Arceo) attended the meeting as an observer (Tr. 31).¹³ According to Paradiso, Limon began the meeting by informing the bargaining unit employees that he was there to address issues with the ITF grievance (Tr. 73). Limon mentioned that there were future grievance settlement monies they would receive. When asked who makes the decision to distribute settlement money, Limon informed them that the decision was made by other union
 40 officials and him. Paradiso testified that Limon “did turn to Eric [Musick] and say that you’re agency status, and he turned to me and said technically I owe \$3,000 or so in back Union dues” (Tr. 75). Paradiso responded that the dues problem occurred because of a clerical error and

¹¹ All dates hereinafter are in 2015 unless otherwise specified.

¹² The Union filed a grievance on Paradiso’s behalf but Paradiso ultimately asked to withdraw the grievance (Tr. 78).

¹³ Arceo did not testify.

should not impact whether he received the settlement money. Limon acknowledged that during the meeting he mentioned Paradiso had not paid dues for some time (Tr. 31). At some point during this meeting, Limon admitted that it was not fair and the settlement should have been distributed equally but that this decision was made by the Union.¹⁴

After the meeting took place, Musick, in collaboration with Paradiso and Galicia, documented the meeting in notes (GC Exh. 5). Musick noted that when they asked Limon how the money was distributed, they did not receive a “straight answer.” Limon also repeatedly told them that there were more grievances in the future and they would be receiving a portion of the settlement monies from these grievances, if they resulted in any.

Musick’s notes also indicate that Limon informed them that the decision to leave them out of the grievance was made at the second or third step of the grievance. Musick writes, “Personal jab at me (Eric) for not being in the Union & at Louis for not paying 4K in union dues (which was a clerical error on the Union’s part).”

Limon admitted that he had known that Musick was an agency fee payer since before the Union settled the ITF grievance (Tr. 20). Limon also knew that Musick had previously received a \$20,000.00 settlement (Tr. 36). Regarding Paradiso, Limon admitted that in the summer of 2014, before he settled the ITF grievance, he knew that Paradiso had not paid union dues for some time (Tr. 20–21).¹⁵ Limon denied that he awarded Samoian with the settlement money because Musick was an agency fee payer or because Paradiso had not paid union dues for a period of time albeit due to a clerical error (Tr. 36–37).

Griggs, who initially recommended that Samoian receive the lump sum settlement money, denied being aware that Musick was an agency fee payer before he recommended Samoian receives the settlement money. Griggs also denied being aware of Paradiso’s union dues error prior to recommending Samoian receive the settlement money (Tr. 89). Dodd denied the same (Tr. 102).

III. DISCUSSION AND ANALYSIS

A. *Credibility Determination*

Generally, no significant credibility disputes concerning the relevant facts exist in this matter. All the witnesses testified consistently regarding the factual history, and the documentary evidence corroborated their testimony. A credibility determination may rely on a variety of factors, including the context of the witness’ testimony, the witness’ demeanor, the weight of the respective evidence, established or admitted facts, inherent probabilities and reasonable inferences that may be drawn from the record as a whole. *Double D Construction*

¹⁴ Limon denied telling the employees that the Union should not have given all the settlement money to Samoian (Tr. 106). I do not credit Limon’s testimony as Musick’s contemporaneous notes, although written directly after the meeting and completed with the input of Paradiso and Galicia, support Musick and Limon’s testimony on this point. Nevertheless, the statement is not determinative.

¹⁵ Limon met with Paradiso in the cafeteria to complete the appropriate paperwork for dues withdrawal (Tr. 69). Paradiso testified that Limon made “a joke about me owing the Union the back dues, but he was only kidding” (Tr. 69).

Group, 339 NLRB 303, 305 (2003); *Daikichi Sushi*, 335 NLRB 622, 623 (2001) (citing *Shen Automotive Dealership Group*, 321 NLRB 586, 589 (1996)), enfd. 56 Fed. Appx. 516 (D.C. Cir. 2003). Credibility findings need not be all-or-nothing propositions—indeed nothing is more common in all kinds of judicial decisions than to believe some, but not all, of a witness’ testimony. *Daikichi Sushi*, 335 NLRB at 622.

However, the parties disagree on the reason behind the union officials’ decision to limit distribution of the settlement monies to Samoian. Contrary to the General Counsel’s assertions, I found the union witnesses to be generally credible and sincere in their testimonies regarding their decision-making process as to whom they should allocate the settlement monies. Limon, Griggs, and Dodd all admitted to the Union’s unwritten rule regarding how they determine to whom to give general grievance settlement monies, and Limon essentially admitted that this allocation rule was unfair. Furthermore, Limon also admitted to knowing the membership status of Musick since at least 2014, and admitted to knowing that Paradiso failed to pay union dues for a number of years. Griggs and Dodd did not know Musick or Paradiso’s membership status when they made the decision, collectively, to distribute the ITF settlement monies only to Samoian. These witnesses answered questions readily, testified candidly and were consistent with one another. As discussed further, I do not find that Limon, Griggs, or Dodd based their settlement money distribution decision on the agency fee payer status of Musick or Paradiso’s delinquency in paying his union dues. However, the sole reason for their decision was their grievance participation policy, which is unlawful.

B. *The Parties’ Positions*

The General Counsel argues that the Union acted in an arbitrary, capricious, discriminatory manner when it decided to distribute settlement monies from the ITF grievance to only one bargaining unit employee, Samoian, based on the Union’s unwritten criteria that because only Samoian assisted the Union in processing the grievance he should be the only employee who received the settlement money. Furthermore, the General Counsel argues that the Union unlawfully decided not to give settlement money to Musick and Paradiso because Musick was an agency dues payer and/or Paradiso failed to pay union dues for a period of time.

The Union argues that it did not violate the Act since the dues paying status of Musick and Paradiso played no role in their decision to award all the ITF grievance settlement money to Samoian. The Union provided little argument regarding the allegation of irrational, arbitrary criteria when designating whom settlement monies should be allocated.

C. *Legal Standard*

An exclusive bargaining representative owes a duty of fair representation to all employees it represents. *Air Line Pilots Assn. v. O’Neill*, 499 U.S. 65, 75–78 (1991). This duty encompasses all functions of a bargaining representative, including distribution of settlement monies. *Teamsters Local 101 (Allied Signal)*, 308 NLRB 140 (1992); *Steelworkers Local 2869 (Kaiser Steel Corp.)*, 239 NLRB 982 (1978). Section 8(b)(1)(A) of the Act provides that it shall be an unfair labor practice for a labor organization “to restrain or coerce ... employees in the exercise of the rights in Section 7 of the Act.

Furthermore, the Board and the courts accord unions a wide range of discretion in serving the employees whom they represent. *Teamsters Local 631 (Vosburg Equipment)*, 340 NLRB 881, 883 (2003). “A wide range of reasonableness must be allowed a statutory bargaining representative in serving the unit it represents, subject always to complete good faith and honesty of purpose in the exercise of its discretion.” *Ford Motor Co. v. Huffman*, 345 U.S. 330, 338 (1953). “[The doctrine of fair representation] includes a statutory obligation to serve the interest of all members without hostility or discrimination toward any, to exercise its discretion with complete good faith and honesty, and to avoid arbitrary conduct.” *Vaca v. Sipes*, 386 U.S. 171, 177 (1967). “Thus it is not every act of disparate treatment or negligent conduct which is proscribed by Section 8(b)(1)(A), but only those which, because motivated by hostile, invidious, irrelevant, or unfair considerations, may be characterized as ‘arbitrary conduct.’” *Steelworkers Local 2869 (Kaiser Steel Corp.)*, supra (citing *United Steelworkers of America Local Union 2610 (Bethlehem Steel Corporation)*, 225 NLRB 310 (1976)); *Truck Drivers Local 692*, 209 NLRB 446 (1974)). Any substantive examination of a union’s performance must be “highly deferential.” *Air Line Pilots Assn.*, supra at 78. Furthermore, a union’s conduct is arbitrary if, in light of the factual and legal landscape at the time of the union’s actions, the union’s behavior is so far outside a “wide range of reasonableness” as to be irrational. *O’Neill*, supra at 67.

D. The Union Violated Section 8(b)(1)(A) of the Act When It Formulated and Implemented an Irrational, Arbitrary Criteria When Distributing the ITF Grievance Settlement Money

The Union filed a general grievance, the ITF grievance, where no one bargaining unit was alleged to have been specifically harmed, but rather, the Union as a whole claimed harm. Eventually, the Union and Raytheon settled the grievance, and Raytheon agreed to pay a total of \$20,000 to environmental technicians the Union designated. Thus, the settlement money was not connected to any individual’s loss of work hours or salary, and Raytheon left the settlement money distribution decision to the Union. In turn, the Union readily admitted that the only reason they decided to award the ITF grievance settlement money to Samoian was because he brought the issue to the Union’s attention, helped to investigate the matter, reviewed the grievance documents, attended the grievance meetings, and was prepared to testify at arbitration. Their decision was not based on any rationale criteria such as loss of income or benefits. The Union stipulated that during the relevant period of time, the Union did not maintain a written rule regarding the distribution of settlement monies but that the Union maintained an unwritten rule or policy that settlement monies will go to those bargaining unit employees who assist the grievance process, as Samoian did in the ITF grievance.

In *Kaiser Steel Corp.*, the union decided to distribute settlement monies to all bargaining unit employees working in the unit as of the date of the settlement agreement. The General Counsel complained that the union violated the Act by failing to distribute settlement monies to former bargaining unit employees who had been impacted by the employer’s violation of the collective-bargaining agreement. The Board determined that the union did not act arbitrarily or unreasonably under the circumstances presented because the union faced many challenges in recovering compensation from the employer, and it was difficult to ascertain which employees suffered losses in pay or the amount of the losses. There, the union developed reasonable, practical criteria regarding those employees entitled to their share in the settlement monies. Thus, the union did not violate the Act.

In contrast, in *District 65, Distributive Workers of America (Blume Associates, Inc.)*, 214 NLRB 1059 (1974), the Board held that the union violated the Act by distributing settlement monies only to those employees who engaged in picketing. Such action violates Section 8(b)(1)(A) of the Act because a union may not discriminate against employees who refrain from engaging in concerted activities. “Section 7 of the Act guarantees employees the right to refrain from assisting a labor organization in its strike or other concerted activities.” *Warehouse & Distribution Workers’ Union Local No. 207*, 118 NLRB 342, 347 (1957).

Under the facts presented in this matter, I find that the Union violated Section 8(b)(1)(A) of the Act when it distributed the ITF grievance settlement monies pursuant to an arbitrary criteria that conditions monetary benefit on grievance participation. The criterion used by the Union is not in dispute, as it was admitted by the union witnesses. Although Samoian, Musick, Paradiso and Galicia were affected by the outcome of the ITF grievance since the work at issue was work they would now be performing, the Union decided to give the entire settlement award to Samoian since he helped with the grievance while Musick and Paradiso, along with Galicia, did not receive any money since they did not participate in the grievance. Thus, the Union created a condition of Section 7 participation to be eligible for general grievance settlement money.

As in *Blume Associates*, the Union’s criterion discriminates against employees who refrain from participating in concerted activities, such as grievance processing, thereby violating their Section 7 rights. The protections provided by Section 7 extend not only to an employee’s decision to participate in union activities, but also to refrain from union activities. It is of no consequence that Musick and Paradiso were aware of the ITF grievance and declined to participate; it was their right to refrain from participating in the grievance process. The Union cannot lawfully distribute settlement monies only to those who assist in the general grievance process. Thus, I find that the Union’s criteria for distribution of the ITF grievance settlement monies was unreasonable and arbitrary, and violated Section 8(b)(1)(A) of the Act.

E. The Union Did Not Violate Section 8(b)(1)(A) of the Act When It Distributed the ITF Grievance Settlement Money Because It Did Not Consider the Charging Parties’ Lack of Union Membership and/or Perceived Failure to Pay Dues

In contrast, I disagree with the General Counsel’s argument that the Union considered Musick’s agency fee payer status and/or Paradiso’s perceived failure to pay dues when it awarded all the ITF grievance settlement money to Samoian. A union may not discriminate against bargaining unit employees solely on the basis of their non-membership status. See *Postal Service*, 345 NLRB 1203 (2005) (union violated Section 8(b)(1)(A) by conditioning training academy instructorship on union membership), *enfd.* 254 Fed.Appx. 582 (9th Cir. 2007); *Puget Sound Area Local #298*, 352 NLRB 792, 793 (2008) (union violated Section 8(b)(1)(A) by discriminating against nonmember unit employees when distributing settlement monies); *Postal Workers Union Local 735*, 342 NLRB 545 (2005) (union violated the Act when it excluded nonmembers from the distribution of the proceeds from a class action grievance); *Letter Carriers Local 3825 (Postal Service)*, 333 NLRB 343, 353 (2001) (union violated the Act when it refused to provide nonmembers with copies of their grievance documents). This query is fact specific.

As set forth in the findings of facts, Griggs, who was not aware of Musick’s agency fee payer status or Paradiso’s missing dues payments, initially proposed Samoian’s name as the bargaining unit employee who should receive the entire settlement amount because of his active participation in the grievance. The General Counsel failed to show any knowledge on the part of Griggs regarding Musick and Paradiso’s dues paying status when he initially proposed and eventually decided that Samoian receive the ITF grievance settlement monies. Griggs did not become aware of Musick’s agency fee payer status or Paradiso’s missing dues payments until well after the decision was made to give the settlement money to Samoian. Dodd, Griggs and Limon collectively decided to give the settlement monies to Samoian only, due to his grievance participation. I find this basis, which I found unlawful as set forth above, was the only reason why the Union decided to distribute the ITF grievance settlement money to Samoian.

The General Counsel argues that because Limon mentioned in the May 1 meeting Musick’s agency fee payer status and Paradiso’s missing union dues that the Union must have considered as such in their decision to whom to award benefits. The record does not support such a contention. Limon admitted being aware of Musick’s agency fee payer status and Paradiso’s missing dues payments prior to making the decision to give the ITF grievance settlement money to Samoian. However, the decision to award the settlement money came from Limon as well as Griggs and Dodd, neither of whom knew the Union status of Musick or Paradiso. Also, Limon, when meeting with Musick and Paradiso, immediately informed them of other upcoming grievances to which they could potentially be awarded settlement money. Even after this settlement decision, the Union sought to process an individual grievance for Paradiso regarding loss of wages based on the premise of the ITF grievance but Paradiso asked the Union to withdraw the grievance.

If the Union considered Musick and Paradiso’s union status to be “unworthy” of receiving settlement money, Limon likely would not have offered such a possibility of future grievance settlement money. Furthermore, Galicia, who did not appear to assist in the ITF grievance, also did not receive any money. If the General Counsel’s theory of the case were to be accepted—that because Musick was an agency fee payer and that because Paradiso did not pay union dues as required—then Galicia should have also received the ITF settlement money because the record lacks any evidence to show that he was anything less than a full dues paying member of the Union. The General Counsel’s argument that Galicia was “collateral damage” lacks any support.

Rather, I find that the Union’s sole basis to award the settlement money to Samoian was due to his participation in the ITF grievance which I have found unlawful. As a result, I also conclude that the Union did not violate the Act since they did not discriminate against Musick for his agency fee payer status and Samoian for his failure to pay dues. Accordingly, I shall dismiss this allegation of the complaint.

CONCLUSIONS OF LAW

1. The Employer is engaged in commerce within the meaning of Section 2(2), (6) and (7) of the Act.
2. Respondent is a labor organization within the meaning of Section 2(5) of the Act.

3. Since April 28, 2015, Respondent violated Section 8(b)(1)(A) of the Act by formulating and implementing an irrational, arbitrary criteria to guide its designation of the recipients of the ITF grievance settlement agreement monies.
4. All other allegations in the complaint are dismissed.

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REMEDY

Having found that Respondent has engaged in certain unfair labor practices, I shall order it to cease and desist therefrom and to take certain affirmative action designed to effectuate the policies of the Act. Specifically, Respondent shall be ordered to cease and desist from formulating and implementing irrational, arbitrary criteria to guide its designation of the recipients of the ITF grievance settlement agreement monies. Respondent shall formulate and implement rational, non-arbitrary criteria for designating the recipient(s) of the ITF grievance settlement agreement monies. Respondent shall inform the bargaining unit of that criterion. Furthermore, Respondent shall make employees whole, with interest, for any losses they suffered due to Respondent's failure to designate the recipient of the ITF grievance settlement monies in accord with rationale, non-arbitrary criteria.

On these findings of fact and conclusions of law and on the entire record, I issue the following recommended¹⁶

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ORDER

The Respondent, Electronic and Space Technicians, Local 1553, El Segundo, California, its officers, agents, and representatives, shall

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1. Cease and desist from

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(a) Formulating and implementing irrational, arbitrary criteria to guide its designation of the recipient of the ITF grievance settlement monies.

(b) In any like or related manner interfering with, restraining, or coercing employees in the exercise of their rights guaranteed by Section 7 of the Act.

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2. Take the following affirmative action which will effectuate the policies of the Act

(a) Formulate and implement rational, non-arbitrary criteria for designating the recipient(s) of the ITF grievance settlement agreement monies.

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(b) Inform the bargaining unit of that criterion.

¹⁶ If no exceptions are filed as provided by Sec. 102.46 of the Board's Rules and Regulations, the findings, conclusions, and recommended Order shall, as provided in Sec. 102.48 of the Rules, be adopted by the Board and all objections to them shall be deemed waived for all purposes.

(c) Make employees whole, with interest, for any losses they suffered due to Respondent's failure to designate the recipient of the ITF grievance settlement monies in accord with rationale, non-arbitrary criteria.

(d) Within 14 days after service by the Region, post at its union office in El Segundo, California copies of the attached notice marked "Appendix."¹⁷ Copies of the notice, on forms provided by the Regional Director for Region 31, after being signed by the Respondent's authorized representative, shall be posted by the Respondent and maintained for 60 consecutive days in conspicuous places including all places where notices to bargaining unit employees are customarily posted. In addition to physical posting of paper notices, the notices shall be distributed electronically, such as by email, posting on an intranet or an internet site, and/or other electronic means, if the Respondent customarily communicates with its bargaining unit employees by such means. Reasonable steps shall be taken by the Respondent to ensure that the notices are not altered, defaced, or covered by any other material. In the event that, during the pendency of these proceedings, the Employer has gone out of business or closed the facility involved in these proceedings, the Respondent shall duplicate and mail, at its own expense, a copy of the notice to all current and former bargaining unit employees employed by the Employer at any time since April 28, 2015.

(e) Within 21 days after service by the Region, file with the Regional Director a sworn certification of a responsible official on a form provided by the Region attesting to the steps that the Respondent has taken to comply.

Dated, Washington, D.C. May 10, 2016



Amita B. Tracy
Administrative Law Judge

¹⁷ If this Order is enforced by a judgment of a United States court of appeals, the words in the notice reading "Posted by Order of the National Labor Relations Board" shall read "Posted Pursuant to a Judgment of the United States Court of Appeals Enforcing an Order of the National Labor Relations Board."

APPENDIX

NOTICE TO EMPLOYEES AND MEMBERS

Posted by Order of the
National Labor Relations Board
An Agency of the United States Government

The National Labor Relations Board has found that we violated Federal labor law and has ordered us to post and obey this notice.

FEDERAL LAW GIVES YOU THE RIGHT TO

Form, join, or assist a union
Choose representatives to bargain on your behalf with your employer
Act together with other employees for your benefit and protection
Choose not to engage in any of these protected activities.

WE WILL NOT formulate and implement irrational, arbitrary criteria to guide the designation of the recipients of the Integrated Test Facilities grievance settlement monies.

WE WILL NOT in any like or related manner interfere with, restrain, or coerce employees in the exercise of their rights guaranteed under Section 7 of the National Labor Relations Act.

WE WILL formulate and implement rational, non-arbitrary criteria for designating the recipient(s) of the Integrated Test Facilities grievance settlement agreement monies.

WE WILL make employees whole, with interest, for any losses they suffered due to Respondent's failure to designate the recipient of the Integrated Test Facilities grievance settlement monies in accord with rationale, non-arbitrary criteria.

ELECTRONIC AND SPACE TECHNICIANS LOCAL 1553

(EMPLOYER)

Dated _____ By _____
(Representative) (Title)

The National Labor Relations Board is an independent Federal agency created in 1935 to enforce the National Labor Relations Act. It conducts secret-ballot elections to determine whether employees want union representation and it investigates and remedies unfair labor practices by employers and unions. To find out more about your rights under the Act and how to file a charge or election petition, you may speak confidentially to any agent with the Board's Regional Office set forth below. You may also obtain information from the Board's website: www.nlrb.gov.

11150 West Olympic Boulevard, Suite 700, Los Angeles, CA 90064-1824
(310) 235-7351, Hours: 8:30 a.m. to 5 p.m.

The Administrative Law Judge's decision can be found at www.nlrb.gov/case/31-CB-152342 or by using the QR code below. Alternatively, you can obtain a copy of the decision from the Executive Secretary, National Labor Relations Board, 1015 Half Street, S.E., Washington, D.C. 20570, or by calling (202) 273-1940.



THIS IS AN OFFICIAL NOTICE AND MUST NOT BE DEFACED BY ANYONE

THIS NOTICE MUST REMAIN POSTED FOR 60 CONSECUTIVE DAYS FROM THE DATE OF POSTING AND MUST NOT BE ALTERED, DEFACED, OR COVERED BY ANY OTHER MATERIAL. ANY QUESTIONS CONCERNING THIS NOTICE OR COMPLIANCE WITH ITS PROVISIONS MAY BE DIRECTED TO THE ABOVE REGIONAL OFFICE'S COMPLIANCE OFFICER, (310) 235-7424.